

**REMARKS**

This amendment is in response to the Examiner's office action dated May 6, 2005.

**1. Information Disclosure Statement**

Applicants acknowledge the signed copy of the IDS from the Examiner.

**2. Specification**

The Examiner has objected to the specification for including blank spaces on page 46. Applicants have amended this paragraph and submit that the specification is now in proper form.

**3. Claim Objections**

The Examiner objects to claims 6 and 8 because of informalities. Applicant thanks Examiner for the suggested changes. The claims have been amended and Applicant respectfully requests reconsideration.

**4. Claim Rejections – 35 U.S.C. § 112**

The Examiner rejects claims 1-8 under the first paragraph of 35 USC 112. Claims 1 and 7 have been amended to include deposit information, and the specification has been amended on page 46 under the paragraph "DEPOSITS" to specify the deposit information for this variety. Applicants respectfully submit that these claims are now in form for allowance.

The Examiner rejects claims 1 and 7 under the second paragraph of 35 USC 112, because the ATCC Accession Number is missing. Applicants have amended claims 1 and 7 to include the ATCC Accession Number. The Examiner also rejects claim 8 due to grammatical references. Applicants thank the Examiner for the suggested change, which Applicants have made. Applicants respectfully submit that these claims are now in form for allowance.

#### 4. Claim Rejections – 35 U.S.C. § 102/103

The Examiner rejects claims 1-8 as being anticipated by or obvious over Streit et al. (US Pat No. 5,959,185, hereinafter the '185 patent). Applicant respectfully traverses. Appendix A shows that both XB53J04 and its progeny within the scope of claims 1-8 are distinct from 95B41 taught in the '185 patent. Isozyme data show that XB53J04 and 95B41 differ at several isozyme loci. Therefore, XB53J04 is not identical to 95B41. The Examiner has stated that if the claimed plant and seeds of the instant invention are not identical to 95B41, then it appears that 95B41 only differs from the claimed plants and seeds due to minor morphological variation wherein said variation would not confer a patentable distinction to XB53J04 plants. Applicant respectfully traverses. The differences presented *supra* show that XB53J04 is not identical to 95B41, and the Examiner has not provided any reference that may be combined with 95B41 to arrive at the present invention. Applicants respectfully request reconsideration.

The Examiner rejects claims 1-8 as being anticipated by or obvious over Conway (US Pat No. 5,920,001, hereinafter the '001 patent). Applicant respectfully traverses.

The Virginia Agricultural Experiment Station tested CX496C and listed it as a NON roundup ready variety in tables 4c, 4i and 4k (see Appendix B). In contrast, XB53J04 is resistant to glyphosate, as disclosed on page 12 of the specification at line 3. Tolerance to glyphosate represents a commercially important trait and is a distinction between the variety of the instant application and CX496C.

In addition, these two varieties exhibit a different response to phytophthora root rot. CX496C has a phytophthora root rot score of 1 (most resistant) as reported in the '001 patent. In contrast, XB53J04 is susceptible to races 4, 7 and 25 as disclosed on table 1 of the specification. In addition, XB53J04 has a score of 4 (low resistance) to phytophthora root rot.

In summary, applicants respectfully assert that XB53J04 is not identical to CX496C, and the Examiner has not provided any reference that may be combined with CX496C to arrive at the present invention. Applicants respectfully request reconsideration.

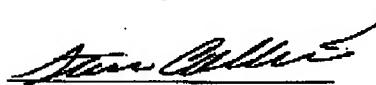
**CONCLUSION**

In conclusion, Applicant submits in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 16-1856.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



Steven Callistein  
Reg. No. 43,525  
Attorney for Applicant

Steven Callistein  
Pioneer Hi-Bred International  
7250 NW 62<sup>nd</sup> Avenue  
P.O. Box 0552  
Johnston, IA 50131-0552  
(515) 254-2823